

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

MERYLYN JOHNSON and ANTONIO JOHNSON

PLAINTIFFS

v.

CIVIL ACTION NO. 4:08CV17-MPM-DAS

PAUL LEWIS, ET AL.

DEFENDANTS

ORDER

Before the court is the defendants' motion for protective order (# 85). Having considered the submissions of the parties and the record, the court finds the motion should be granted in part.

The defendants are seeking relief from a notice of deposition served by the plaintiffs on July 23, 2009, setting the deposition of Dr. Carroll McLeod, Merlyn Johnson's treating physician, for August 5, 2009, only five days before trial. The defendants argue the notice is improper because the discovery period is closed. In response, the plaintiffs contend that Dr. McLeod's deposition is sought for the sole purpose of use at trial in lieu of having him appear to testify, which would greatly interrupt and inconvenience his active medical practice.

Though the court recognizes that the convenience of this witness is an appropriate and important consideration, under the circumstances it does not outweigh the court's interest in the efficient management and resolution of this case. The deposition is scheduled to take place only two business days prior to trial, which would greatly inconvenience the defendants and allow the court virtually no time to address objections prior to trial. Moreover, the court finds that any inconvenience suffered by Dr. McLeod would be the result of the plaintiff's failure to act or seek court intervention prior to the eve of trial.

Finally, the court finds that entry of sanctions is not warranted, and thus the defendants'

request for sanctions is not well taken. Accordingly, it is

ORDERED that the defendants' motion for a protective order and to quash deposition notice is hereby **GRANTED**; however, the defendants' request for sanctions is **DENIED**.

THIS, the 30th day of July, 2009.

/s/ David A. Sanders
U. S. MAGISTRATE JUDGE